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Paper No. 5

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In re Application of
Park, et al.
Application No. 09/728,117
Deposited: December 4, 2000
Attorney Docket No. 101190-00010
For: MULTI-CHANNELED LOOP HEAT
TRANSFER DEVICE WITH HIGH EFFICIENCY
FINS

OFFICE OF PETITIONS

ON PETITION

This is a decision on the "REQUEST FOR RECONSIDERATION OF NOTICE OF TERMINATION OF PROCEEDING AND PETITION FOR FILING DATE," filed August 20, 2003. The petition will be treated under (1) 37 CFR 1.181 as a petition to withdraw termination of proceedings and (2) 37 CFR 1.53(e) as a petition to accord a filing date of December 4, 2000 to the above-identified application.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.53(e)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.53(e) is **DISMISSED**.

The application was deposited on December 4, 2000. On February 15, 2001, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application (Notice) stating that the application had not been accorded a filing date because it lacked a specification, at least one claim, and drawings, as is required by 35 USC 111(a)(2)(A)-(C). No response was received prior to the expiration of the two month period for reply set from the mail date of the February 15, 2001 Notice. Thus, the Office terminated proceedings. Notice of the termination of proceedings was mailed on May 29, 2003. The present petition was filed on August 20, 2003.

Petition under 37 CFR 1.181 to Withdraw Termination of Proceedings

Petitioner requests withdrawal of termination of proceedings based on non-receipt of the February 15, 2001 Notice.

A review of the record indicates no irregularity in the mailing of the February 15, 2001 Notice, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

The showing required to establish nonreceipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

Petitioner has provided a statement that a thorough search of the file jacket and docket records was conducted and practitioner referenced a copy of the docket records where the non-received Office communication would have been entered had it been received. There is no mention of the February 15, 2001 Notice. Petitioner has shown that the February 15, 2001 Notice was not received at the address of record.

The petition under 37 CFR 1.181 to withdraw termination of proceedings is **granted**.

**Petition under 37 CFR 1.53(e) to Accord a Filing Date of
December 4, 2000**

Petitioner requests that the above-identified application be accorded a filing date of December 4, 2000 on the basis that a specification, claims, and drawings were received in the Patent and Trademark Office (PTO) on December 4, 2000.

In support, the petition is accompanied by a copy of applicant's postcard receipt showing an Office of Initial Patent Examination generated barcode showing December 4, 2000 as the date of receipt. The postcard lists, *inter alia*, that the filing included 35 pages of new application, \$395 in fees, a small entity declaration, an assignment, a declaration, a priority document, and 17 pages of drawings.

The date stamped postcard receipt constitutes *prima facie* evidence that 35 pages of new application were filed on December 4, 2000. MPEP 503. In fact, a review of the contents of the application reveals that there are at least 35 pages of application present as of December 4, 2000.

¹ See notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

However, these pages are part of a Korean priority document in Korean language. There are no English language pages of specification present.

Pursuant to 37 CFR 1.52(d), a nonprovisional application may be in a language other than English. If the Korean language priority document is a complete application under 37 CFR 1.53(b) and petitioner files a certified true and complete English translation of the Korean language priority document, as is required by 37 CFR 1.52(d)(1), the English translation of the Korean language priority document will be used as the application papers. In this manner, the application will be entitled to a December 4, 2000 filing date.

Petitioner must submit the \$355 basic filing fee, as the fee (minus a \$130 processing and retention fee) submitted on December 4, 2000 was subsequently returned. The \$130 processing and retention fee will be allocated as the \$130 processing fee for the submission of an English translation of the Korean application.

This application will be retained in the Office of Petitions.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
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Post Office Box 1450
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Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.

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